

IN THE CIRCUIT OF ST. LOUIS COUNTY, MISSOURI

CITY OF EUREKA,

Plaintiff,

Case No. 21SL-MU00212

v.

Division 40

JOHN M. URBANOWICZ,

Defendant / Counter Claimant.

COUNTERCLAIM
FOR
DEPRIVATION OF CONSTITUTIONAL CIVIL RIGHTS

COMES NOW Defendant and Counterclaimant, John M. Urbanowicz, and, for his cause of action against the City of Eureka, Missouri for deprivation of his civil rights secured by the United States Constitution and federal law, states the following:

1. This counterclaim is being brought pursuant to 42 U.S. Code, sec. 1983, and involves a question of constitutional and/or federal law.
2. On or about January 22, 2021, John M. Urbanowicz, (hereinafter, “DEFENDANT”), was going door-to-door in Eureka, Missouri attempting to sell his employer’s services to residents of that city.
3. On or about January 22, 2021, John M. Urbanowicz was arrested by M. Feick, a police officer for the City of

Eureka, (hereinafter “EUREKA”) for the alleged crime of soliciting without a permit in violation of the Eureka Municipal Code, section 15-16, as amended on December 16, 2019.

4. By arresting DEFENDANT for solicitation, Officer Feick deprived DEFENDANT of his First Amendment rights of freedom of expression, as well as his Fourteenth Amendment rights of due process and equal protection under the law, as provided by the Constitution of the United States.
5. By arresting DEFENDANT for violation municipal ordinance, section 15-16, Officer Feick was executing a policy enacted by the lawmakers of EUREKA.
6. By arresting DEFENDANT for violation of section 15-16, Officer Feick was acting under the color of EUREKA’S municipal law.
7. Under Chapter 12, Article I, Sections 12-1(a), of the Eureka Municipal Code, EUREKA defines Peddler to include:

...”any person who shall deal in the sale of goods, wares, merchandise or services by outcry or by going about from place to place, house to house, door to door, on foot or by conveyance... to offer or sell such goods, wares, merchandise or services.”
8. Section 12-1(b) declares that it shall be unlawful for any person to engage in the business of a peddler within the city. In sub-parts (1)-(3), EUREKA

lists three exceptions to the peddler prohibition. None of those exceptions apply to DEFENDANT's activities at the time of his arrest.

9. EUREKA arrested and charged DEFENDANT for soliciting without a permit.
10. This charge implies that EUREKA has a permitting process, when, in fact, it has no permitting process set forth in its Code.
11. As a result of EUREKA's unconstitutional prohibition against door to door sales, DEFENDANT has suffered economic damages due to lost sales, lost income, and lost profits.
12. DEFENDANT's economic damages exceed \$75,000.00.
13. EUREKA's actions as aforesaid were the proximate cause of DEFENDANT's economic damages.
14. As a result of EUREKA'S actions as aforesaid, DEFENDANT has suffered physical injury, pain and suffering, and has suffered mental anguish from the stresses of lost income, as well as personal humiliation and embarrassment from being arrested in public while attempting to earn a living in order to support his family.

WHEREFORE, DEFENDANT prays this honorable court to:

- A. Declare that Eureka Municipal Code, section 15-16 is

unconstitutional as violating DEFENDANT's First and Fourteenth Amendment rights;

- B. Declare that Eureka Municipal Code, Chapter 12, Article I, Section 12-2(a) is unconstitutional as violating DEFENDANT's First and Fourteenth Amendment rights;
- C. Enter judgment in favor of DEFENDANT and against EUREKA for
 - a. compensatory damages in an amount to exceed \$75,000.00 for DEFENDANT's economic damages;
 - b. Damages for physical injury, pain and suffering, and mental anguish in an amount to exceed \$25,000.00; and,
 - c. For reasonable attorney's fees and court costs incurred.
- D. For such further and other relief as the Court deems just and proper in the premises.

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